Supreme Court, U.S.
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No. 02-132

IN THE

Supreme Court of the United States

MOBIL CORPORATION AND
HONEYWELL INTERNATIONAL INC.,
Petitioners,

v.

BRUCE W. ADKINS, *et al.*
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

RESPONDENTS' SUPPLEMENTAL BRIEF REGARDING DEVELOPMENTS OCCURING AFTER THE FILING OF OUR BRIEF IN OPPOSITION

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Pursuant to Supreme Court Rule 15.8, respondents make this submission to call the Court's attention to recent developments in the West Virginia trial proceedings underlying the pending Petition for Writ of Certiorari.

As set forth in the attached Affidavit of Theodore Goldberg, the common issues phase of trial has commenced with respect to the product liability and premises liability defendants, and there are only six defendants remaining in those groups, including petitioner Mobil Corporation. All other defendants, including petitioner Honeywell International, have reached final settlements with all of the plaintiffs

in this proceeding, or have been severed from the proceeding. Because so few defendants remain, the common issues phase of trial against the sole remaining premises owner (Union Carbide) and the few remaining products liability defendants (Mobil, Union Carbide, Rhone-Poulenc AG Co., Borg Warner Automotive, Inc., Graybar Electric Co., and Vimasco Corp.) have been consolidated in a single courtroom before a single jury. The trial for the third group of defendants—the employer group—is scheduled to begin in December. There are very few defendants left in that group.

This information is relevant to the Court's consideration of the Petition. Petitioners' first "Question Presented" focuses on the purported unfairness of a "mass trial" of "thousands of disparate product-liability claims against hundreds of defendants." Pet. iii. For example, petitioners argued that such a "mass trial" would "make it impossible for a defendant like Mobil to assert its unique defenses in a meaningful way." Pet. 18. It is now clear, however, that there will be no "mass trial" against "hundreds of defendants," and that Mobil will have ample opportunity to present its defenses.

Petitioners' second "Question Presented" is predicated on an alleged "holding" by the West Virginia Supreme Court that "the Due Process Clause permits a state court to apply its own state law to thousands of . . . cases, aggregated for a mass trial, that the court itself has acknowledged have no connection at all to the state." Pet. iii. As respondents pointed out in our Opposition, the challenged decision did not "address [the choice-of-law] issue in any way." Opp. 26. But a choice-of-law ruling was made on August 12, 2002. 8/12/02 Tr. 172-73. If Mobil were to convince the West Virginia Supreme Court that *Phillips Co. v. Shutts*, 472 U.S. 797, 815 (1985), requires further inquiry into the "connection" between the claims made and the law to be applied, such further inquiry would *not*, contrary to petitioners' claims, be "confusing and unmanageable." Pet. 24. Rather,

given the recent drastic reduction in the number of defendants (and, accordingly, premises) implicated here, further inquiry into conflicts of law (if any is necessary) should be straightforward.

Respectfully submitted,

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